

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

-v-

GARY ALAN TANAKA,

Defendant.

USDS SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: 4/25/14

No. 05 Cr. 621 (RJS)
PRELIMINARY ORDER OF
FORFEITURE/MONEY JUDGMENT

RICHARD J. SULLIVAN, District Judge:

WHEREAS, on August 15, 2006, GARY ALAN TANAKA ("Tanaka") was charged in a twelve-count Superseding Indictment, S3 05 Cr. 621 (KMK) (the "Indictment"), along with another, with engaging in a conspiracy to commit securities fraud, investment adviser fraud, mail fraud, wire fraud, and money laundering, in violation of Title 18, United States Code Section 371 (Count One); securities fraud, in violation of Title 15, United States Code, Sections 78j(b) and 78ff, Title 17, Code of Federal Regulations, Section 240.10b-5, and Title 18, United States Code, Section 2 (Counts Two and Three); investment adviser fraud, in violation of Title 15, United States Code, Sections 80b-6 and 80b-17 and Title 18, United States Code, Section 2 (Count Four); mail fraud, in violation of Title 18, United States Code, Sections 1341 and 2 (Count Five); wire fraud, in violation of Title 18, United States Code, Sections 1343 and 2 (Counts Six and Seven); and money laundering, in violation of Title 18, United States Code, Sections 1957 and 2 (Counts Eight through Eleven); and making false statements in violation of Title 18, United States Code, Sections 1001(a) and 2 (Count Twelve);

WHEREAS, the Indictment contained a forfeiture allegation seeking, pursuant to Title 18, United States Code, Section 981(a)(1)(C) and Title 28, United States Code, Section 2461, the

forfeiture of any and all property, real and personal, that constitutes or is derived from proceeds traceable to the commission of the offenses, including but not limited to at least \$19,706,363.74 in United States currency, representing the proceeds obtained as a result of the charged securities, mail, and wire fraud offenses charged in the Indictment for which the defendant is jointly and severally liable (Counts 1 through 7); and seeking, pursuant to Title 18, United States Code, Section 982, the forfeiture of any and all property, real and personal, involved in the charged money laundering offenses, including all property traceable to such property, including but not limited to at least \$5,000,000.00 in United States currency (Counts 8 through 11);

WHEREAS, on November 19, 2008, a jury returned a guilty verdict against the defendant on Counts One, Three, and Four of the Indictment (conspiracy, securities fraud, and investment adviser fraud) and was acquitted on the remaining counts, including the money laundering counts;

WHEREAS, on February 5, 2010, the defendant was sentenced and ordered to forfeit an amount of United States currency to be determined by the Court;

WHEREAS, on April 7, 2010, an Order of Forfeiture was entered by the Court ordering a money judgment against the defendant in the amount of \$54,351,159.00;

WHEREAS, on or about August 30, 2013, following the defendant's appeal, the Court of Appeals affirmed the defendant's conviction, vacated his sentence and remanded the case to the District Court for re-sentencing;

WHEREAS, on or about the April 24, 2014, the defendant was re-sentenced and ordered to forfeit \$20,578,855.28 representing the amount of proceeds obtained as a result of the offenses charged in the Indictment, for which the defendant was found guilty;

NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED THAT:

1. As a result of the offenses charged in the Indictment, for which the defendant was found guilty, a money judgment in the amount of \$20,578,855.28 in United States Currency (the "Money Judgment") shall be entered against the defendant. The Defendant's liability for this money judgment shall be joint and several with that of any other defendant ordered to forfeit assets for the offenses in this matter, specifically Alberto Vilar.

2. Pursuant to Rule 32.2(b)(4)(A) of the Federal Rules of Criminal Procedure, this Preliminary Order of Forfeiture/Money Judgment is final as to the defendant, GARY ALAN TANAKA, and is deemed part of the sentence of the defendant and shall be included in the judgment of his convictions therewith.

3. Pursuant to Rule 32.2(b)(3) of the Federal Rules of Criminal Procedure, upon entry of this Preliminary Order of Forfeiture/Money Judgment the United States Attorney's Office is authorized to conduct any discovery needed to identify, locate or dispose of the property, including depositions, interrogatories, requests for production of documents and to issue subpoenas, pursuant to Rule 45 of the Federal Rules of Civil Procedure.

4. Upon execution of this Preliminary Order of Forfeiture/Money Judgment, and Pursuant to Title 21, United States Code, Section 853, the United States Marshals Service shall be authorized to deposit the payments on the Money Judgment in the Assets Forfeiture Fund, and the United States shall have clear title to such forfeited property.

5. All payments on the outstanding Money Judgment shall be made by Postal money order, bank or certified check, made payable, in this instance, to the "United States Marshal Service," and delivered by mail to the United States Attorney's Office, Southern District of New

York, Attn: Money Laundering and Asset Forfeiture Unit, One St. Andrews Plaza, New York, New York 10007, and shall indicate the defendant's name and case number.

6. The Clerk of the Court shall forward four certified copies of this Preliminary Order of Forfeiture/Money Judgment to Assistant U.S. Attorney Sharon Cohen Levin, Chief, Money Laundering and Asset Forfeiture Unit, United States Attorney's Office, Southern District of New York, One St. Andrews Plaza, New York, New York, 10007.

SO ORDERED.

Dated: April 25, 2014
New York, New York



RICHARD J. SULLIVAN
UNITED STATES DISTRICT JUDGE